



## ENVIRONMENTAL LAW SECTION

THE STATE BAR OF CALIFORNIA

August 12, 2005

Ms. Lorna Maynard  
Board of Legal Specialization  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105

**Re: Proposed Standards for Certification and Recertification of  
Real Estate Law Specialists**

Ladies and Gentlemen:

I write to advise you that after review and discussion, the Executive Committee of the Environmental Law Section of the State Bar of California does not believe that the proposed certification standards for a real estate law specialization that includes undefined areas of environmental law will be a successful program. Accordingly, on behalf of the Environmental Law Section, the Executive Committee recommends against adoption of the proposed real estate law certification standards that have been circulated for public comment. For the reasons set forth below, we believe that the goals of the specialization program would more appropriately be met by specifically tailoring the specialization program to address traditional real estate law, along with either eliminating or clarifying the components of environmental law included in such a proposed specialization.

The Executive Committee is quite concerned that the proposed standards include several elements that more properly could be considered components of environmental law. Nonetheless, the Environmental Law Section was not consulted to provide input into the development of these standards. The Executive Committee only recently became aware of the proposed standards. We immediately convened to review and discuss these standards and their impact on the members of the Environmental Law Section.

We have identified significant concerns in the manner in which the following Designated Practice Areas are defined: 3.1, Land Use and Development, and Environmental Matters; 3.5, Agricultural and Ranch; 3.7, Finance and Secured Transactions; and 3.13, Natural Resources. Each of these four Designated Practice Areas includes at least one significant component that implicates traditional environmental law concepts. However, the descriptions are so vague and generalized that it is impossible for the Executive Committee to understand what components of environmental law are intended to be encompassed under the proposed real estate specialty.

The Executive Committee has not been afforded sufficient time to evaluate the draft standards and to advise and consult with the members of the Environmental Law Section. For this reason, the Executive Committee must oppose the draft standards in their current form. The Executive Committee would be pleased to provide specific recommendations for revising the draft standards; however, we would require sufficient time to prepare draft revisions and obtain comments and input from the Environmental Law Section members as a whole.

If the Board of Legal Specialization intends to move forward with the proposed standards without further soliciting input from the Environmental Law Section, the Executive Committee requests that the Board of Legal Specialization delete the following components of environmental law by revising the proposed standards as follows:

- 3.1 **Land Use and Development, ~~and Environmental Matters:~~** including, but not limited to, variances, change in use or occupancy, plan amendments, re-zoning ordinances, use permits, ~~compliance with environmental acts, environmental liabilities and property restrictions, and entitlements for operations or permits.~~
- 3.5 **Agricultural and Ranch:** including, but not limited to, property purchase, financing, refinancing or lease, crop share and farm management agreements, ~~water supply transactions, environmental limitations,~~ compliance with Farm Services Agency (FSA) requirements, and permits.
- 3.7 **Finance and Secured Transactions:** including, but not limited to, loan commitment letters and agreements, trust deeds, title review, rent assignment, ~~hazardous substance agreement,~~ construction loan issues, structuring of loan transactions, and default proceedings.
- 3.13 **Natural Resources:** ~~including, but not limited to, entitlements and compliance issues relating to natural resource requirements of administrative/regulatory agencies, agreements for the transfer of rights in natural resources, and means of establishing natural resource entitlements of real property.~~

Again, I would like to emphasize the Executive Committee's willingness to work with the Board of Legal Specialization to clarify the proposed Designated Practice Areas. As currently written, the proposed standards might allow an environmental law practitioner with little or no traditional real estate practice to become certified as a Real Estate Specialist. Thus, there can be no question that the proposed standards will impact members of the Environmental Law Section. For this reason, the Executive Committee chose to oppose the proposed standards in their current form.

The Executive Committee of the Environmental Law Section appreciates the hard work spent to prepare these proposed standards and is willing to assist in clarifying standards for certification in appropriate subspecialties of real estate law. However, for the reasons set forth above, the Executive Committee must respectfully oppose adoption of the proposed standards in their current form.

Very Truly Yours,

Brett J. Morris  
Chair,  
Environmental Law Section